

#13

4068.P004X

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Andrew T. Busey, et al.

Serial No.: 09/060,867

Filed: April 15, 1998

For: METHOD AND APPARATUS FOR REAL TIME
NETWORK COMMUNICATION

Examiner: Winder, P.

Art Unit: 2758

Commissioner for Patents
 Washington, D.C. 20231

PETITION TO REVIVE AN ABANDONED APPLICATION
 UNDER 37 CFR 1.137 (b)

Sir:

The Applicants respectfully petitions The Commissioner for Patents to revive the above-identified application under the provisions of 37 CFR 1.137(b) on the ground that the delay in taking required further action was unintentional.

FIRST CLASS CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231

on December 12, 2001

Date of Deposit

Carla Zavala

Name of Person Mailing Correspondence

Signature

Date

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1. Petition fee

The petition fee of \$1,210.00 for unintentional abandonment of a large entity is enclosed herewith.

2. Reply and/or fee

The reply and fee to the above-noted Office Action in the form of an Amendment and Response are enclosed herewith.

3. Terminal disclaimer with disclaimer fee

Since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

4. STATEMENT:

The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. If a petition pursuant to 37 CFR 1.137 is not filed within a year of the date of the abandonment, as per MPEP section 711.03(c)(iii)(C) and (D), the Patent Office requires:

(A) further information as to when the applicant (or the applicant's representative) first became aware of the abandonment of the application; and

(B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative).

Enclosed are several documents including several Notice of Recordation of Assignment documents, an assignment of patent rights, and correspondence letters from current and previous counsel of record.

The above-mentioned application, serial number 09/060,867, was originally assigned to Acuity corporation as evidenced by the Notice of Recordation of Assignment document enclosed herewith. Acuity corporation was acquired by Quintus corporation, and the above-mentioned application was assigned to Quintus. This assignment transfer is evidenced by the Notice of Recordation of Assignment document enclosed herewith. Quintus corporation was then acquired by Avaya corporation, and the above-mentioned application was assigned to Avaya. This is evidenced by the assignment document enclosed herewith which is an assignment of patent rights from Quintus corporation to Avaya, Inc. on April 10, 2001.

During the latter stages of the prosecution history, Gray Cary Ware & Friednerich LLP was the law firm prosecuting the above-mentioned application for Quintus. As Quintus was acquired by Avaya, the file for the above-mentioned application was transferred first to Quintus and then to Blakely Sokoloff Taylor & Zafman, which is the law firm currently prosecuting the application. During negotiations between Quintus and Avaya, as well as the subsequent multiple transfers of the file from one entity to another, the above-mentioned application went unintentionally abandoned.

During the transfer of the file from Gray Cary to Quintus corporation, Gray Cary sent a letter to Quintus informing Quintus that Gray Cary has no further responsibility for the prosecution of the above-mentioned application, serial number 09/060.867. The letter is dated June 8, 2000.

A second letter from Gray Cary to Quintus corporation informs Quintus corporation of the receipt of the Final Office Action for this case, mailed on July 19, 2000, with a response deadline of October 19, 2000. That letter also informs Quintus again that Gray Cary has no further responsibility for the file. That letter is dated August 16, 2000. No response to that office action was filed, and, as a result, the case had gone abandoned on January 20, 2001. No further communications in this case have been sent by the US Patent Office.

The file was first transferred to Blakely Sokoloff by Quintus on January 1, 2001. At that time, negotiations were occurring between Quintus and Avaya for the acquisition of Quintus's patent rights. The assignment of patent rights did not occur until April 10, 2001 from Quintus to Avaya. Shortly thereafter, counsel at Blakely Sokoloff became aware of the abandonment of the case, but had not yet received clear instructions to proceed with the case.

The transfer of patent rights from Quintus to Avaya that occurred on April 10, 2001 involved a substantial amount of intellectual property. Handling the tasks of sorting out the acquired intellectual property assets and the difficulties associated with those tasks had to be handled before any course of action could be taken with respect to any of the patent application cases, including this one. After the necessary work was done associated with those tasks, copies of the file were transferred to Avaya corporation to determine if Avaya desired to revive the case.

A letter was sent from Avaya corporation to Blakely Sokoloff on September 10, 2001 instructing Blakely Sokoloff to take the necessary steps to revive the application.

Accordingly, Blakely Sokoloff has since then reviewed the file and written a Final Office Action response to file along with this petition to revive.

As illustrated above, the above-mentioned application went abandoned without intent on the part of any of the parties involved, including the previous counsel of record (Gray Cary), Quintus corporation, Avaya corporation, and the current counsel of record (Blakely Sokoloff). Accordingly, Applicants respectfully petitions the Commissioner for Patents to revive the above-identified application under the provisions of 37 CFR 1.137(b) on the ground that the delay in taking required further action was unintentional.

Please charge any additional fees or credit any overpayment to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Original Signed By

Dated: 12/12/2001

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